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IN THE

Supreme Court of the United States

OCTOBER TERM, 1944.

No. 256.

WALTER A. LEIMER, PETITIONER,

VS.

FRED B. HULSE ET AL., RESPONDENTS.

BRIEF OF RESPONDENTS IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

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BRIEF OF RESPONDENTS IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

RESPONDENTS' STATEMENT OF FACTS.

The petitioner seeks to have this court review by Writ of Certiorari the order, judgment and opinion of the Supreme Court of Missouri in the case of Walter A. Leimer, plaintiff in error, vs. Fred B. Hulse *et al.*, defendants in error, reported in 178 S. W. 2d 335, wherein the petitioner was disbarred from the practice of law within the State of Missouri.

The official and professional conduct of the petitioner, a member of the Bar of the State of Missouri, was investigated in 1936 by the Bar Committee of the 16th Judicial Circuit of Missouri, which comprised Jackson County, Missouri. At the petitioner's request the State Bar Advisory Committee took over such investigation. After a hearing the case was held in suspension upon the advice of the petitioner and his then counsel that the matters then under investigation would be corrected, and upon promises of future good behavior (See *Leimer* v. *Hulse*, 178 S. W. 2d l. c. 341).

The State Bar Advisory Committee appointed by the Supreme Court of Missouri, under its Rule 36, was compelled in 1941, by the further misconduct of the petitioner, to institute a new investigation of him. That hearing was begun on January 3, 1941. At such hearing the petitioner was represented by counsel and at great length the petitioner in person and through his witnesses presented his explanation of such matters as were then under investigation (See *Leimer* v. *Hulse*, 178 S. W. 2d l. c. 341).

As a result of that hearing an information was filed in the Circuit Court of Jackson County, Missouri, by Fred B. Hulse *et al.*, as members of the State Bar Advisory Committee appointed by the Supreme Court of Missouri under its Rule 36, (351 Mo., p. xv) as informants charging the petitioner, Walter A. Leimer, with professional misconduct and with specific violations of Rule 35 of the Supreme Court of Missouri, as specifically set out in the reported opinion (178 S. W. 2d 335, l. c. 337, 338). After the filing by petitioner of many dilatory motions, pleas and affidavits for change of venue, unauthorized by the statutes and laws of Missouri, issue was joined on March 24, 1942, by the filing of the petitioner's answer. The cause came on for trial in the Circuit Court of Jackson County,

Missouri, on April 20, 1942, and continued daily thereafter until March 4, 1942. On June 8, 1942, the Circuit Court of of Jackson County, Missouri, entered its finding of facts and decree in which it specifically found the facts against the petitioner herein on all counts of the information (except Count V) and found that Rule 35 of the Supreme Court of Missouri (Cannon on Ethics of American Bar Association) had been violated, and disbarred the petitioner herein from the practice of law in the courts of the State of Missouri.

Thereafter, the Supreme Court of Missouri granted the petitioner a writ of error to the Circuit Court of Jackson County, Missouri, and the matter was set for hearing and submission in the Supreme Court of Missouri. Briefs were filed by both of the parties and the cause was orally argued by the petitioner and by counsel for the State Advisory Committee. On January 3, 1944, the Supreme Court of Missouri entered its order and judgment affirming the decree of the trial court and filed its opinion, in which it ruled that the testimony was "sufficient and ample to sustain the findings of fact made by the trial court" and "fully support the judgment" of disbarment (*Leimer* v. *Hulse*, 178 S. W. 2d 335). The petitioner sought a review of that order and opinion of the Supreme Court of Missouri by filing his motion for rehearing, which motion was by the Supreme Court denied. The petitioner also filed in the Supreme Court of Missouri (Division No. 1) a motion to transfer the cause to the court *en banc*, which motion the Supreme Court denied.

By petition now filed here the petitioner seeks a Writ of Certiorari directed to the Supreme Court of Missouri to have the Judgment of the Supreme Court of Missouri reviewed by this court. The petitioner has not served upon respondents or their counsel any record in this case and reference cannot be made herein to pages in the original record filed by the petitioner in this court.

POINTS AND AUTHORITIES.

I.

The petition for the writ of certiorari should be denied because it violates Section II of Rule 38 of this court in that it does not contain a clear and concise statement of the case.

Rule 38, S. Ct., U. S.

Southern Power Co. v. *North Carolina Public Service Co.*, 263 U. S. 508.

Magnum Import Co. v. *Houbigant, Inc.*, 262 U. S. 159.

II.

The petition for the writ of certiorari should be denied by this court because it does not appear from the petition for the writ that the Supreme Court of Missouri has decided a federal question of substance not heretofore determined by this court, nor does it appear that the Supreme Court of Missouri has decided any federal question in a way not in accord with the applicable decisions of this court.

Section V (A) of Rule 38, S. Ct., U. S.

III.

The petition for the writ of certiorari should be denied because this is a disbarment proceedings and the Supreme Court of Missouri has the inherent right to regulate the admission and disbarment of its officers and attorneys.

Ex parte James S. Robinson, 19 Wall. 505, 22 L. Ed. 205.

Bradley v. *Fisher*, 13 Wall. 335, 20 L. Ed. 648.

Connelly v. *U. S.*, (Cir. Ct. 8th Cir.) 59 F. 2d 929.

Hertz v. *U. S.*, (Cir. Ct. 8th Cir.) 18 F. 2d 52.
In re Richards, 333 Mo. 907, 63 S. W. 2d 672.
5 Am. Jur., Sec. 252, p. 411.
6 C. J., Sec. 37, p. 580.
7 C. J. S., Sec. 18, p. 728.
2 R. C. L., Sec. 179, pp. 1086, 1087.

IV.

The petition for the writ of certiorari should be denied because the judgment of the Supreme Court of Missouri disbarring the petitioner as an attorney from practicing law before it does not deprive him of any privilege or immunity secured by the Constitution or the laws of the United States.

Bradwell v. *State of Illinois*, 16 Wall. 130, 21 L. Ed. 442.
Ex parte Lockwood, 154 U. S. 116, 14 S. Ct. 1082, 38 L. Ed. 929.
Philbrook v. *Newman et al.*, (Cir. Ct. N. D. Cal.) 85 Fed. 139.
Green v. *Elbert*, (8th Cir.) 63 Fed. 308.
Mitchell v. *Greenough*, (Cir. Ct. 9th Cir.) 100 F. 2d 184.
In re Robinson, 131 Mass. 376.
Ruckenbrod v. *Mullins et al.*, (Utah) 133 Pac. 2d 335.
Ralston v. *Turner*, (Nebr.) 4 N. W. 2d 402.
7 C. J. S., Sec. 4B, p. 708.
5 Am. Jur., Sec. 14, p. 270.

V.

The petition for the writ of certiorari should be denied because the petitioner has been accorded due process of law. The petitioner has had a hearing and trial in the regularly constituted courts of Missouri, both trial and appellate, in the manner authorized by the constitution and

laws of Missouri. Such matters of procedure are governed by the laws of the forum and the decision of the Supreme Court of Missouri on a matter of state procedure is not reviewable by this court.

Kenney v. *Craven*, 215 U. S. 125, 30 S. Ct. 64, 54 L. Ed. 122.

Gibson v. *Mississippi*, 162 U. S. 565, 16 S. Ct. 904, 40 L. Ed. 1075.

Central Vermont and Railway Co. v. *White*, 238 U. S. 507, 35 S. Ct. 869, 59 L. Ed. 1433.

Wilson v. *North Carolina*, 169 U. S. 586, 42 L. Ed. 865.

Leimer v. *Hulse*, 178 S. W. 2d 335.

VI.

The petition for the writ of certiorari should be denied because the Supreme Court of the United States will not review the action of the Supreme Court of Missouri in disbarring attorneys admitted to practice by the Supreme Court of Missouri.

Ex parte Secombe, 19 How. 9, 15 L. Ed. 565.

Selling v. *Radford*, 243 U. S. 46, 61, L. Ed. 585.

ARGUMENT.

POINT I.

The petition for the writ of certiorari should be denied because it violates Section II of Rule 38 of this court in that it does not contain a clear and concise statement of the case.

This petition for writ of certiorari should be denied because it violates paragraph II of Rule 38 of this court. The petition does not contain a summary or short statement of the matter involved. It does not disclose the basis upon which it is contended that this court has jurisdiction to review the decision of the Supreme Court of Missouri, nor does it disclose the questions presented and the reasons relied on for the allowance of the writ. A reading of this statement will not disclose the basis upon which the petitioner seeks to have this court review the decision of the Supreme Court of Missouri or the questions sought to be presented to this court and the basis for this court taking jurisdiction of this cause. The statement does not disclose what the Supreme Court of Missouri held in its decision with reference to the petitioner, nor what right of the petitioner has been violated by the decision of the Supreme Court of Missouri so as to entitle him to a review by this court.

It is not a clear, definite and complete disclosure concerning the controversy involved, as required in applications for writs of certiorari.

The statement does not comply with Section II of Rule 38, and should be dismissed.

Rule 38, S. Ct., U. S.

Southern Power Co. v. *North Carolina Public Service Co.*, 263 U. S. 508.

Magnum Import Co. v. *Houbigant, Inc.*, 262 U. S. 159.

POINT II.

The petition for the writ of certiorari should be denied by this court because it does not appear from the petition for the writ that the Supreme Court of Missouri has decided a federal question of substance not heretofore determined by this court, nor does it appear that the Supreme Court of Missouri has decided any federal question in a way not in accord with the applicable decisions of this court.

The petition herein does not come within the provisions of Paragraph A of Section V of Rule 38 of this court, which provides as follows:

> "Where a state court has decided a federal question of substance not theretofore determined by this court, or has decided it in a way probably not in accord with applicable decisions of this court."

Respondents submit that the writ of certiorari does not issue from this court as a matter of right. A writ will not issue to a state court unless the case falls within the above rule. The petitioner has not pointed out in his petition what federal question of substance was determined by the Supreme Court of Missouri in the decision of *Leimer* v. *Hulse*, 178 S. W. 2d 335, which was not theretofore determined by this court, nor has he pointed out how the Supreme Court of Missouri has decided a federal question not in accord with the applicable decisions of this court.

This is a disbarment proceedings. It involves the right of the Supreme Court of Missouri to disbar the petitioner whom it had heretofore admitted to practice in this state. No federal question is presented in this case. The right of the petitioner to practice law is not a federal question. The act of the Supreme Court of Missouri in denying to the petitioner the right to continue the practice of

law does not create a federal question under the above rule within the laws and Constitution of the United States, as is pointed out hereafter. No federal question is involved in this case and the petition should be denied.

The decision of the Supreme Court of Missouri herein, is consistent with and in accord with the decisions of this court in disbarment proceedings as will be seen later in this brief.

POINT III.

The petition for the writ of certiorari should be denied because this is a disbarment proceedings and the Supreme Court of Missouri has the inherent right to regulate the admission and disbarment of its officers and attorneys.

The petitioner, Walter A. Leimer, was admitted to practice by the Supreme Court of Missouri in 1922. He was admitted to practice under the laws of Missouri and the rules of the Supreme Court of Missouri. The Supreme Court of Missouri having granted him the right to practice, has the right to take away the privilege for proper cause. In *Bradley* v. *Fisher,* 13 Wall. 335, 20 L. Ed. 646, l. c. 651, this court, in speaking of disbarment of attorneys, says:

> "If now, we apply the principle thus stated, the question presented in this case is one of easy solution. The Criminal Court of the District, as a court of general criminal jurisdiction, possessed the power to strike the name of the plaintiff from its rolls as a practicing attorney. This power of removal from the Bar is possessed by all courts which have authority to admit attorneys to practice. It is a power which should only be exercised for the most weighty reasons, such as would render the continuance of the attorney in practice incompatible with a proper respect of the court for itself or a proper regard for the integrity of the profession. And, except where mat-

ters occurring in open court in presence of the judges constitute the grounds of its action, the power of the court should never be exercised without notice to the offending party of the grounds of complaint against him, and affording him ample opportunity of explanation and defense. * * *"

In *Hertz* v. *U. S.*, (Cir. Ct. 8th Cir.) 18 F. 2d 52, the Circuit Court of Appeals for the Eighth Circuit, l. c. 54, expresses the rule as follows:

> "The inherent power exists in every court to disbar an attorney for improper professional conduct. Referring to this subject the Supreme Court of the United States said in *Bradley* v. *Fisher*, 80 U. S. (13 Wall.) 335, 354 (20 L. Ed. 646):
>
> > 'This power of removal from the bar is possessed by all courts which have authority to admit attorneys to practice. It is a power which should only be exercised for the most weighty reasons, such as would render the continuance of the attorney in practice incompatible with a proper respect of the court for itself, or a proper regard for the integrity of the profession.'
>
> See, also, *Selling* v. *Radford*, 243 U. S. 46, 37 S. Ct. 270, 61 L. Ed. 726; *Ex parte In the Matter of David A. Secombe*, 19 How. 9, 15 L. Ed. 565; *Ex parte Robinson*, 86 U. S. (19 Wall.) 505, 22 L. Ed. 205; *United States ex rel. Hallett* v. *Green*, (C. C.) 85 Fed. 857; *In re Boone*, (C. C.) 83 Fed. 944; 6 C. J., p. 580, Art. 37; Weeks on Attorneys, Art. 80."

The rules above announced that a court which admits an attorney to practice has the inherent right to disbar him is further supported by the cases cited in the Points and Authorities. The Supreme Court of Missouri in the case of *In re Richards*, 63 S. W. 2d 672, at page 674, collects a great number of cases from the federal courts and the supreme courts of most of the states of the

Union as supporting the above rule. A citation of those cases here would be burdensome.

The Supreme Court of Missouri, having admitted the petitioner to practice, therefore had an inherent right to disbar the petitioner for proper cause, in the absence of constitutional or statutory prohibitions. There are no constitutional or statutory prohibitions which would prohibit the Supreme Court of Missouri from disbarring the petitioner for cause, as will be seen hereafter.

POINT IV.

The petition for the writ of certiorari should be denied because the judgment of the Supreme Court of Missouri disbarring the petitioner as an attorney from practicing law before it does not deprive him of any privilege or immunity secured by the Constitution or the laws of the United States.

As will be seen above, the Supreme Court of Missouri has the inherent right to regulate the admission and disbarment of its attorneys. The exercise of that right by the Supreme Court of Missouri does not violate any of the privileges or immunities secured by the Constitution or laws of the United States. This Court in *Bradwell* v. *Illinois*, 16 Wall. 130, 21 L. Ed. 442, in discussing the right to practice law in a state court with reference to the 14th amendment to the Constitution of the United States, says, l. c. 445, as follows:

> "In regard to that Amendment counsel for the plaintiff in this court truly says that there are certain privileges and immunities which belong to a citizen of the United States as such; otherwise it would be nonsense for the 14th Amendment to prohibit a State from abridging them, and he proceeds to argue that admission to the bar of a State, of a person who possesses the requisite learning and character, is one of those which a State may not deny.

In this latter proposition we are not able to concur with counsel. We agree with him that there are privileges and immunities belonging to citizens of the United States, in that relation and character, and that it is these and these alone which a State is forbidden to abridge. But the right to admission to practice in the courts of a State is not one of them. This right in no sense depends on citizenship of the United States. It has not, as far as we know, ever been made in any State or in any case to depend on citizenship at all. Certainly many prominent and distinguished lawyers have been admitted to practice both in the State and Federal Courts, who were not citizens of the United States or of any State. But, on whatever basis this right may be placed, so far as it can have any relation to citizenship at all, it would seem that, as to the courts of this State, it would relate to citizenship of the State, and as to Federal Courts, it would relate to citizenship of the United States."

This Court announces the same rule in *Ex parte Lockwood*, 154 U. S. 116, 14 S. Ct. 1082, 38 L. Ed. 929.

In *Philbrook* v. *Newman*, 85 Fed. 139, the Circuit Court of the Northern District of California, in holding that a judgment of a State Court disbarring an attorney from practicing before it does not deprive him of any privilege or immunity secured by the Constitution or laws of the United States, says at l. c. 142, as follows:

> "In the case of *Duncan* v. *Missouri*, 152 U. S. 382, 14 S. Ct. 571, the supreme court again says:
>
> > 'But the privileges and immunities of citizens of the United States protected by the fourteenth amendment are privileges and immunities arising out of the nature and essential character of the federal government, and granted or secured by the constitution.'

Plaintiff received the right to practice law in the courts of California in pursuance of the laws of California, and not by virtue of any provision of the laws or the constitution of the United States. He was disbarred under the provisions of the law of California, and not those of the national government. I think it may be safely asserted, therefore, that the statute under which plaintiff claims the right to bring this action does not apply to this case. In the proceedings to disbar him, he was not deprived of any right, privilege, or immunity secured to him by the constitution or laws of the United States. And it may be said the judgment against him was not entered as a punishment, but for the protection of the court. But plaintiff asserts that he was deprived of his rights without due process of law. I have already partly discussed this question, in considering the jurisdiction of the supreme court of the state in the disbarment proceedings. In the case of *Duncan* v. *Missouri*, *supra*, the supreme court said:

> 'Due process of law and the equal protection of the law are secured if the laws operate on all alike, and do not subject the individual to an arbitrary exercise of the powers of government.' "

Further support of this proposition will be found in the cases cited under this Point in Points and Authorities.

From the foregoing it is evident that the Supreme Court of Missouri in disbarring the petitioner did not deprive him of any of the privileges or immunities secured by the constitution or laws of the United States. Such being true, no federal question is presented in this proceedings and the petitioner has failed to bring himself within the rules giving this court jurisdiction to review the decision herein.

The right to practice law is not a property right within the purview of the constitution, but is a privilege which is not secured by the constitution and laws of the United States.

The rule is laid down in 7 C. J. S., Sec. IVB, p. 708, which provides as follows:

> "The right to practice law is not a natural or constitutional right, nor an absolute right, or a right *de jure*, but is a privilege or franchise. The right to practice law is not 'property' nor in any sense 'contract' nor a 'privilege or immunity' within the constitutional meaning of those terms. It cannot be assigned or inherited but must be earned by hard study and good conduct."

POINT V.

The petition for the writ of certiorari should be denied because the petitioner has been accorded due process of law. The petitioner has had a hearing and trial in the regularly constituted courts of Missouri, both trial and appellate, in the manner authorized by the constitution and laws of Missouri. Such matters of procedure are governed by the laws of the forum and the decision of the Supreme Court of Missouri on a matter of state procedure is not reviewable by this court.

Since the right to practice law is not a property right or a privilege secured by the constitution and laws of the United States, no federal question can exist on that proposition. While the petitioner does not point out the federal questions involved upon which he seeks to have this court review this case, the only other federal question which could be involved would be whether the petitioner had been deprived of due process of law. The respondents insist, however, that there is no basis in this record for such a contention.

The petitioner was charged by an information filed by the State Bar Advisory Committee of the Supreme Court of Missouri, which was created under the rules of the Supreme Court of Missouri. This information was filed in the Circuit Court of Jackson County, Missouri.

The petitioner was served with process as required by law. The petitioner, after many dilatory pleas and motions, joined issue by filing his answer in the cause. The trial was had before the Circuit Court of Jackson County, Missouri, in which the petitioner appeared in person and through his attorneys. Many witnesses were presented on behalf of the petitioner in support of his explanation and defense to the charge made. The trial in the trial court was conducted according to the practice and procedure of the laws of Missouri. From an adverse judgment in the trial court the petitioner, by writ of error, had his case reviewed by the Supreme Court of Missouri. The petitioner had his day in court. His trial was had in the regularly constituted courts of Missouri, both trial and appellate, in the manner authorized by the constitution and laws of Missouri. The petitioner has, therefore, been accorded due process of law.

This court in discussing due process in the case of *Wilson* v. *State of North Carolina ex rel. Caldwell*, 169 U. S. 586, 42 L. Ed. 865, at 870 of the L. Ed., says as follows:

> "The only question for us to review is whether the state, through the action of its governor, and judiciary, has deprived the plaintiff in error of his property without due process of law, or denied to him the equal protection of the laws.
>
> "We are of the opinion the plaintiff in error was not deprived of any right guaranteed to him by the Federal Constitution, by reason of the proceedings before the governor under the statute above mentioned, and resulting in his suspension from office.
>
> "The procedure was in accordance with the Constitution and laws of the state. It was taken under a valid statute creating a state office in a constitutional manner, as the state court has held. What kind and

how much of a hearing the officer should have before suspension by the governor was a matter for the state legislature to determine, having regard to the Constitution of the state. The procedure provided by a valid state law for the purpose of changing the incumbent of a state office will not in general involve any question for review by this court. A law of that kind does but provide for the carrying out and enforcement of a policy of a state with reference to its political and internal administration, and a decision of the state court in regard to its construction and validity will generally be conclusive here. The facts would have to be most rare and exceptional which would give rise in a case of this nature to a Federal question.

"Upon this subject it was said in the case of *Allen* v. *Georgia*, 166 U. S. 138 (41:949), as follows:

> 'To justify any interference upon our part it is necessary to show that the course pursued has deprived, or will deprive, the plaintiff in error of his life, liberty, or property without due process of law. Without attempting to define exactly in what due process of law consists, it is sufficient to say that, if the supreme court of a state has acted in consonance with the constitutional laws of a state and its own procedure, it could only be in very exceptional circumstances that this court would feel justified in saying that there had been a failure of due legal process. We might ourselves have pursued a different course in this case, but that is not the test. The plaintiff in error must have been deprived of one of those fundamental rights, the observance of which is indispensable to the liberty of the citizen to justify our interference.'

"This statement is quoted with approval in *Hovey* v. *Elliott*, 167 U. S. 409, at 443 (42:215, at 230)."

A reference to the decision of *Leimer* v. *Hulse et al.*, 278 S. W. 2d 335, will disclose that the petitioner has been accorded due process.

It is evident from the foregoing that there is no federal question presented in this record with reference to the question of due process.

POINT VI.

The petition for the writ of certiorari should be denied because the Supreme Court of the United States will not review the action of the Supreme Court of Missouri in disbarring attorneys admitted to practice by the Supreme Court of Missouri.

The respondents respectfully insist that this court has no authority to review the judgment of the Supreme Court of Missouri disbarring petitioner. The Supreme Court of Missouri which admitted the petitioner to practice had the inherent right to disbar petitioner for good cause. Petitioner's right to practice law is not a property right, nor is it a privilege secured by the constitution or laws of the United States. The petitioner has had his day in court according to the constitution and laws of the State of Missouri. No federal question is presented herein to give this court jurisdiction and this court will not review the judgment of the Supreme Court of Missouri in disbarring an attorney.

That this court has no authority to review the decision of the Supreme Court of Missouri in a disbarment proceedings is supported by the decision of this court in the case of *Selling* v. *Radford*, 243 U. S. 46, 61 L. Ed. 585. This court, in speaking of a disbarment case, at 61 L. Ed., l. c. 587, says:

> "In the light of these conclusions, the question is, What, consistently with the duty which rests upon

us, is exacted in dealing with the situation now presented?

"In coming to solve that question three things are patent: (a) that we have no authority to re-examine or reverse, as a reviewing court, the action of the supreme court of Michigan in disbarring a member of the Bar of the courts of that state for personal and professional misconduct; * * *."

A similar view of this court is also expressed in the case of *Ex parte Secombe*, 19 How. 9, 15 L. Ed. 565.

Conclusion.

The respondents respectfully submit that the petitioner's application for writ of certiorari herein should be denied. The petitioner has not complied with the rules of this court as to the form of his petition. He has not presented to this court any federal question authorizing this court to review the decision of the Supreme Court of Missouri for the reason that no such federal question exists herein. The Supreme Court of Missouri has an inherent right not based on the Federal Constitution or laws to disbar the petitioner. The petitioner was accorded a hearing and trial in the regularly constituted courts of Missouri, both trial and appellate, in the manner authorized by the Constitution and Laws of Missouri. The question involved here presents a matter of purely local or state law and this court will not review the action of the Supreme Court of Missouri in disbarring the petitioner.

Respectfully submitted,

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No. 352. 1256

WALTER A. LEIMER, PETITIONER,

VS.

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RESPONDENTS.

BRIEF OF PETITIONER IN REPLY TO RESPONDENTS' BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

WALTER A. LEIMER,
Attorney and Petitioner.

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Supreme Court of the United States

OCTOBER TERM, 1944.

No. 352.

WALTER A. LEIMER, PETITIONER,

VS.

FRED B. HULSE, JOHN GROVER ET AL.,
RESPONDENTS.

BRIEF OF PETITIONER IN REPLY TO RESPONDENTS' BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

In reply to the brief and argument of Respondents Relator states that not only have the Courts laid down precepts and precedents but that the legislature of Missouri has also enacted legislation to insure the litigant a fair hearing before a disinterested judge or tribunal.

In re Howell, 273 Mo. 96, 122, 200 S. W. 65, the Missouri Supreme Court held:

> "It is plain that Judge Wear by his relation to his son the defendant was disqualified and knowing this it was his imperative duty to either order the election of a special judge or call the Judge of another Circuit to sit in the trial of the said indictment.
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